

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

NUTRITION & FITNESS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE WINNING COMBINATION INC.)	Case No. 5:10-cv-00088-BR
)	
and)	
)	
KAIZEN NUTRITION, INC. NV,)	
)	
Defendants.)	

CONSENT JUDGMENT AS TO DEFENDANT KAIZEN NUTRITION, INC., N.V.

Nutrition & Fitness, Inc. ("NFI") filed an amended complaint in this action against Kaizen Nutrition, Inc., N.V. ("Kaizen"), alleging that Kaizen's use of the marks HERBALEAN and HERBALEAN FX constitutes infringement of NFI's registered mark HERBALEANE and unfair competition. In addition, NFI sought a declaratory judgment that it has not abandoned the HERBALEANE mark. Kaizen did not timely answer the amended complaint, NFI moved for entry of default against Kaizen on June 23, 2011, and the Court entered default against Kaizen on April 20, 2011. NFI and Kaizen, in order to resolve all of the issues between them in this litigation, agree upon the entry of this Consent Judgment.

NOW, THEREFORE, with the consent of NFI and Kaizen, as reflected by their signatures below,

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Court has jurisdiction over NFI and Kaizen and the subject matter of this action, and venue is proper in this Court.

2. NFI is the owner of a registration for the mark HERBALEANE (U.S. Registration No. 2,024,834) (“834 Registration”) for use with “herb and vitamin supplement” in International Class 5.

3. The Parties entered into a Settlement Agreement effective as of AUG. 11, 2011 (“Effective Date”).

4. Kaizen, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of this Consent Judgment by personal service or otherwise, are hereby prohibited and permanently enjoined from:

- a. With respect to the HERBALEAN and HERBALEAN FX marks, directing advertising, promotions, or offers for sale to the United States, or selling, shipping, providing, or otherwise transferring possession of any goods or services under the HERBALEAN and HERBALEAN FX marks to consumers in the United States, whether via Internet websites or otherwise; and
- b. Applying to register the HERBALEAN and HERBALEAN FX marks in the United States.

5. To the extent Kaizen advertises, promotes, or offers for sale any goods or services under the HERBALEAN or HERBALEAN FX marks on the Internet, within sixty (60) days after the Effective Date of the Settlement Agreement, Kaizen shall expressly indicate in a prominent manner that such goods and services are not available for purchase in the United States.

6. Kaizen shall notify all resellers or distributors of its products that no goods or services bearing the HERBALEAN and HERBALEAN FX marks may be distributed in or imported into the United States.

7. If Kaizen learns that one of its customers is using the HERBALEAN or HERBALEAN FX mark in the United States in violation of Sections 6(a) or 8 above, Kaizen shall give NFI written notice.

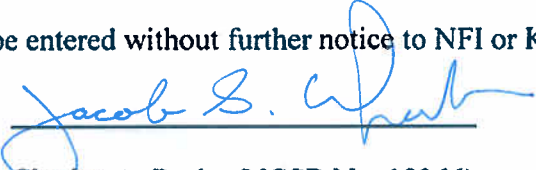
8. NFI and Kaizen shall bear their own attorneys' fees and costs incurred in connection with this litigation.

9. In the event of any violation by NFI or Kaizen of the terms of this Consent Judgment, the prevailing party will be entitled to an award of its reasonable attorneys' fees incurred in seeking to enforce this Consent Judgment.

10. This Court retains jurisdiction over NFI and Kaizen for the purposes of enforcing this Consent Judgment and any action relating to the enforcement of this Consent Judgment.

11. NFI and Kaizen waive their right to an appeal from or to otherwise contest this Consent Judgment, and this judgment may be entered without further notice to NFI or Kaizen.

This 11th day of August, 2011.



Charles A. Burke (NCSB No. 19366)
Melissa G. Ferrario (NCSB No. 36749)
Jacob S. Wharton (NCSB No. 37421)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
One West Fourth Street
Winston-Salem, North Carolina 27101
Telephone: 336-721-3761
Facsimile: 336-726-9093
Email: cburke@wcsr.com
mferrario@wcsr.com
jwharton@wcsr.com

Attorneys for Plaintiff, Nutrition & Fitness, Inc.

Kaizen Nutrition, Inc., N.V.

By:

Its:


Pres
1819 Kona Drive
Compton, California

The court directs entry of this judgment as there is no just reason for delay.

IT IS SO ORDERED this the 12 day of August 2011.



The Honorable W. Earl Britt,
Senior United States District Court Judge